

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 640

Introduced by Schilz, 47; Harms, 48.

Read first time January 21, 2009

Committee: Revenue

A BILL

1 FOR AN ACT relating to the Nebraska Advantage Act; to amend
2 sections 77-5725 and 77-5726, Revised Statutes Cumulative
3 Supplement, 2008; to provide for a local option on
4 whether local option sales and use taxes are refundable;
5 to harmonize provisions; and to repeal the original
6 sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-5725, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 77-5725 (1) Applicants may qualify for benefits under the
4 Nebraska Advantage Act in one of six tiers:

5 (a) Tier 1, investment in qualified property of at least
6 one million dollars and the hiring of at least ten new employees.
7 There shall be no new project applications for benefits under
8 this tier filed on or after January 1, 2011, without further
9 authorization of the Legislature. All complete project applications
10 filed before January 1, 2011, shall be considered by the Tax
11 Commissioner and approved if the project and taxpayer qualify
12 for benefits. Agreements may be executed with regard to completed
13 project applications filed before January 1, 2011. All project
14 agreements pending, approved, or entered into before such date
15 shall continue in full force and effect;

16 (b) Tier 2, investment in qualified property of at least
17 three million dollars and the hiring of at least thirty new
18 employees;

19 (c) Tier 3, the hiring of at least thirty new employees.
20 There shall be no new project applications for benefits under
21 this tier filed on or after January 1, 2011, without further
22 authorization of the Legislature. All complete project applications
23 filed before January 1, 2011, shall be considered by the Tax
24 Commissioner and approved if the project and taxpayer qualify
25 for benefits. Agreements may be executed with regard to completed

1 project applications filed before January 1, 2011. All project
2 agreements pending, approved, or entered into before such date
3 shall continue in full force and effect;

4 (d) Tier 4, investment in qualified property of at least
5 ten million dollars and the hiring of at least one hundred new
6 employees;

7 (e) Tier 5, investment in qualified property of at least
8 thirty million dollars. Failure to maintain an average number of
9 equivalent employees as defined in section 77-5727 greater than or
10 equal to the number of equivalent employees in the base year shall
11 result in a partial recapture of benefits; and

12 (f) Tier 6, investment in qualified property of at least
13 ten million dollars and the hiring of at least seventy-five new
14 employees or the investment in qualified property of at least
15 one hundred million dollars and the hiring of at least fifty new
16 employees. Agreements may be executed with regard to completed
17 project applications filed before January 1, 2016. All project
18 agreements pending, approved, or entered into before such date
19 shall continue in full force and effect.

20 (2) When the taxpayer has met the required levels of
21 employment and investment contained in the agreement for a tier 1,
22 tier 2, tier 4, tier 5, or tier 6 project, the taxpayer shall be
23 entitled to the following incentives:

24 (a) A Except as provided in subdivision (2)(g) of section
25 77-5726, a refund of all sales and use taxes for a tier 2, tier 4,

1 tier 5, or tier 6 project or a refund of one-half of all sales and
2 use taxes for a tier 1 project paid under the Local Option Revenue
3 Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324,
4 and 13-2813 from the date of the application through the meeting of
5 the required levels of employment and investment for all purchases,
6 including rentals, of:

7 (i) Qualified property used as a part of the project;

8 (ii) Property, excluding motor vehicles, based in this
9 state and used in both this state and another state in connection
10 with the project except when any such property is to be used for
11 fundraising for or for the transportation of an elected official;

12 (iii) Tangible personal property by the owner of the
13 improvement to real estate that is incorporated into real estate as
14 a part of a project; and

15 (iv) Tangible personal property by a contractor or
16 repairperson after appointment as a purchasing agent of the owner
17 of the improvement to real estate. The refund shall be based on
18 fifty percent of the contract price, excluding any land, as the
19 cost of materials subject to the sales and use tax; and

20 (b) Except as provided in subdivision (2)(g) of section
21 77-5726, a refund of all sales and use taxes for a tier 2, tier 4,
22 tier 5, or tier 6 project or a refund of one-half of all sales and
23 use taxes for a tier 1 project paid under the Local Option Revenue
24 Act, the Nebraska Revenue Act of 1967, and sections 13-319, 13-324,
25 and 13-2813 on the types of purchases, including rentals, listed in

1 subdivision (a) of this subsection for such taxes paid during each
2 year of the entitlement period in which the taxpayer is at or above
3 the required levels of employment and investment.

4 (3) Any taxpayer who qualifies for a tier 1, tier 2,
5 tier 3, or tier 4 project shall be entitled to a credit equal to
6 three percent times the average wage of new employees times the
7 number of new employees if the average wage of the new employees
8 equals at least sixty percent of the Nebraska average annual wage
9 for the year of application. The credit shall equal four percent
10 times the average wage of new employees times the number of new
11 employees if the average wage of the new employees equals at least
12 seventy-five percent of the Nebraska average annual wage for the
13 year of application. The credit shall equal five percent times the
14 average wage of new employees times the number of new employees
15 if the average wage of the new employees equals at least one
16 hundred percent of the Nebraska average annual wage for the year of
17 application. The credit shall equal six percent times the average
18 wage of new employees times the number of new employees if the
19 average wage of the new employees equals at least one hundred
20 twenty-five percent of the Nebraska average annual wage for the
21 year of application. For computation of such credit:

22 (a) Average annual wage means the total compensation paid
23 to employees during the year at the project who are not base-year
24 employees and who are paid wages equal to at least sixty percent
25 of the Nebraska average weekly wage for the year of application,

1 excluding any compensation in excess of one million dollars paid
2 to any one employee during the year, divided by the number of
3 equivalent employees making up such total compensation;

4 (b) Average wage of new employees means the average
5 annual wage paid to employees during the year at the project who
6 are not base-year employees and who are paid wages equal to at
7 least sixty percent of the Nebraska average weekly wage for the
8 year of application, excluding any compensation in excess of one
9 million dollars paid to any one employee during the year; and

10 (c) Nebraska average annual wage means the Nebraska
11 average weekly wage times fifty-two.

12 (4) Any taxpayer who qualifies for a tier 6 project shall
13 be entitled to a credit equal to ten percent times the total
14 compensation paid to all employees, other than base-year employees,
15 excluding any compensation in excess of one million dollars paid to
16 any one employee during the year, employed at the project.

17 (5) Any taxpayer who has met the required levels of
18 employment and investment for a tier 2 or tier 4 project shall
19 receive a credit equal to ten percent of the investment made in
20 qualified property at the project. Any taxpayer who has met the
21 required levels of investment and employment for a tier 1 project
22 shall receive a credit equal to three percent of the investment
23 made in qualified property at the project. Any taxpayer who has
24 met the required levels of investment and employment for a tier
25 6 project shall receive a credit equal to fifteen percent of the

1 investment made in qualified property at the project.

2 (6) The credits prescribed in subsections (3), (4), and
3 (5) of this section shall be allowable for compensation paid and
4 investments made during each year of the entitlement period that
5 the taxpayer is at or above the required levels of employment and
6 investment.

7 (7) The credit prescribed in subsection (5) of this
8 section shall also be allowable during the first year of the
9 entitlement period for investment in qualified property at the
10 project after the date of the application and before the required
11 levels of employment and investment were met.

12 (8)(a) A taxpayer who has met the required levels of
13 employment and investment for a tier 4 or tier 6 project shall
14 receive the incentive provided in this subsection. A taxpayer who
15 has a project for an Internet web portal and who has met the
16 required level of investment for a tier 5 project shall receive the
17 incentive provided in this subsection for property in subdivision
18 (8)(b)(ii) of this section. Such investment and hiring of new
19 employees shall be considered a required level of investment and
20 employment for this subsection and for the recapture of benefits
21 under this subsection only.

22 (b) The following property used in connection with such
23 project or projects and acquired by the taxpayer, whether by
24 lease or purchase, after the date the application was filed shall
25 constitute separate classes of personal property:

1 (i) Turbine-powered aircraft, including turboprop,
2 turbojet, and turbofan aircraft, except when any such aircraft is
3 used for fundraising for or for the transportation of an elected
4 official;

5 (ii) Computer systems, made up of equipment that is
6 interconnected in order to enable the acquisition, storage,
7 manipulation, management, movement, control, display, transmission,
8 or reception of data involving computer software and hardware, used
9 for business information processing which require environmental
10 controls of temperature and power and which are capable of
11 simultaneously supporting more than one transaction and more than
12 one user. A computer system includes peripheral components which
13 require environmental controls of temperature and power connected
14 to such computer systems. Peripheral components shall be limited to
15 additional memory units, tape drives, disk drives, power supplies,
16 cooling units, data switches, and communication controllers;

17 (iii) Depreciable personal property used for a
18 distribution facility, including, but not limited to, storage
19 racks, conveyor mechanisms, forklifts, and other property used to
20 store or move products;

21 (iv) Personal property which is business equipment
22 located in a single project if the business equipment is involved
23 directly in the manufacture or processing of agricultural products;
24 and

25 (v) For a tier 6 project, any other personal property

1 located at the project.

2 (c) Such property shall be eligible for exemption from
3 the tax on personal property from the first January 1 following
4 the date of acquisition for property in subdivision (8)(b)(i)
5 of this section, or from the first January 1 following the end
6 of the year during which the required levels were exceeded for
7 property in subdivisions (8)(b)(ii), (iii), (iv), and (v) of this
8 section, through the ninth December 31 after the first year any
9 property included in subdivisions (8)(b)(ii), (iii), (iv), and (v)
10 of this section qualifies for the exemption. In order to receive
11 the property tax exemptions allowed by subdivision (8)(b) of this
12 section, the taxpayer shall annually file a claim for exemption
13 with the Tax Commissioner on or before May 1. The form and
14 supporting schedules shall be prescribed by the Tax Commissioner
15 and shall list all property for which exemption is being sought
16 under this section. A separate claim for exemption must be filed
17 for each project and each county in which property is claimed
18 to be exempt. A copy of this form must also be filed with the
19 county assessor in each county in which the applicant is requesting
20 exemption. The Tax Commissioner shall determine the eligibility
21 of each item listed for exemption and, on or before August 1,
22 certify such to the taxpayer and to the affected county assessor.
23 In determining the eligibility of items of personal property for
24 exemption, the Tax Commissioner is limited to the question of
25 whether the property claimed as exempt by the taxpayer falls

1 within the classes of property described in subdivision (8)(b) of
2 this section. The determination of whether a taxpayer is eligible
3 to obtain exemption for personal property based on meeting the
4 required levels of investment and employment is the responsibility
5 of the Tax Commissioner.

6 (9) The investment thresholds in this section for a
7 particular year of application shall be adjusted by the method
8 provided in this subsection. Beginning October 1, 2006, and each
9 October 1 thereafter, the Producer Price Index for all commodities,
10 published by the United States Department of Labor, Bureau of Labor
11 Statistics, for the most recent available period shall be divided
12 by the Producer Price Index for the first quarter of 2006 and
13 the result multiplied by the applicable investment threshold. The
14 investment thresholds shall be adjusted for cumulative inflation
15 since 2006. If the resulting amount is not a multiple of one
16 million dollars, the amount shall be rounded to the next lowest
17 one million dollars. The investment thresholds established by this
18 subsection apply for purposes of project qualifications for all
19 applications filed on or after January 1 of the following year
20 for all years of the project. Adjustments do not apply to projects
21 after the year of application.

22 Sec. 2. Section 77-5726, Revised Statutes Cumulative
23 Supplement, 2008, is amended to read:

24 77-5726 (1)(a) The credits prescribed in section 77-5725
25 shall be established by filing the forms required by the Tax

1 Commissioner with the income tax return for the year. The credits
2 may be used and shall be applied in the order in which they
3 were first allowed. The credits may be used after any other
4 nonrefundable credits to reduce the taxpayer's income tax liability
5 imposed by sections 77-2714 to 77-27,135. Any decision on how part
6 of the credit is applied shall not limit how the remaining credit
7 could be applied under this section.

8 (b) The taxpayer may use the credit provided in
9 subsections (3) and (4) of section 77-5725 to reduce the taxpayer's
10 income tax withholding employer or payor tax liability under
11 section 77-2756 or 77-2757 to the extent such liability is
12 attributable to the number of new employees at the project. To the
13 extent of the credit used, such withholding shall not constitute
14 public funds or state tax revenue and shall not constitute a trust
15 fund or be owned by the state. The use by the taxpayer of the
16 credit shall not change the amount that otherwise would be reported
17 by the taxpayer to the employee under section 77-2754 as income tax
18 withheld and shall not reduce the amount that otherwise would be
19 allowed by the state as a refundable credit on an employee's income
20 tax return as income tax withheld under section 77-2755.

21 The amount of credits used against income tax withholding
22 shall not exceed the withholding attributable to new employees at
23 the project. If the amount of credit used by the taxpayer against
24 income tax withholding exceeds this amount, the excess withholding
25 shall be returned to the Department of Revenue in the manner

1 provided in section 77-2756, such excess amount returned shall be
2 considered unused, and the amount of unused credits may be used
3 as otherwise permitted in this section or shall carry over to the
4 extent authorized in subdivision (1)(d) of this section.

5 (c) ~~Credits~~ Except as provided in subdivision (2)(g) of
6 this section, credits may be used to obtain a refund of sales and
7 use taxes under the Local Option Revenue Act, the Nebraska Revenue
8 Act of 1967, and sections 13-319, 13-324, and 13-2813 which are not
9 otherwise refundable that are paid on purchases, including rentals,
10 for use at the project for a tier 1, tier 2, tier 3, or tier 4
11 project or for use within this state for a tier 6 project.

12 (d) The credits earned for a tier 6 project may be used
13 to obtain a payment from the state equal to the real property
14 taxes due after the year the required levels of employment and
15 investment were met and before the end of the carryover period,
16 for real property that is included in such project and acquired
17 by the taxpayer, whether by lease or purchase, after the date the
18 application was filed. The payment from the state shall be made
19 only after payment of the real property taxes have been made to the
20 county as required by law. Payments shall not be allowed for any
21 taxes paid on real property for which the taxes are divided under
22 section 18-2147 or 58-507.

23 (e) Credits may be carried over until fully utilized,
24 except that such credits may not be carried over more than nine
25 years after the year of application for a tier 1 or tier 3 project,

1 fourteen years after the year of application for a tier 2 or tier
2 4 project, or more than one year past the end of the entitlement
3 period for a tier 6 project.

4 (2) (a) No refund claims shall be filed until after the
5 required levels of employment and investment have been met.

6 (b) Refund claims shall be filed no more than once each
7 quarter for refunds under the Nebraska Advantage Act, except that
8 any claim for a refund in excess of twenty-five thousand dollars
9 may be filed at any time.

10 (c) Any refund claim for sales and use taxes on materials
11 incorporated into real estate as a part of the project shall be
12 filed by and the refund paid to the owner of the improvement
13 to real estate. A refund claim for such materials purchased
14 by a purchasing agent shall include a copy of the purchasing
15 agent appointment, the contract price, and a certification by
16 the contractor or repairperson of the percentage of the materials
17 incorporated into the project on which sales and use taxes were
18 paid to Nebraska after appointment as purchasing agent.

19 (d) All refund claims shall be filed, processed, and
20 allowed as any other claim under section 77-2708, except that
21 the amounts allowed to be refunded under the Nebraska Advantage
22 Act shall be deemed to be overpayments and shall be refunded
23 notwithstanding any limitation in subdivision (2) (a) of section
24 77-2708. The refund may be allowed if the claim is filed within
25 three calendar years from the end of the year the required levels

1 of employment and investment are met or within the period set forth
2 in section 77-2708.

3 (e) If a claim for a refund of sales and use taxes
4 under the Local Option Revenue Act or sections 13-319, 13-324, and
5 13-2813 of more than twenty-five thousand dollars is filed by June
6 15 of a given year, the refund shall be made on or after November
7 15 of the same year. If such a claim is filed on or after June
8 16 of a given year, the refund shall not be made until on or
9 after November 15 of the following year. The Tax Commissioner shall
10 notify the affected city, village, county, or municipal county of
11 the amount of refund claims of sales and use taxes under the Local
12 Option Revenue Act or sections 13-319, 13-324, and 13-2813 that are
13 in excess of twenty-five thousand dollars on or before July 1 of
14 the year before the claims will be paid under this section.

15 (f) Interest shall not be allowed on any taxes refunded
16 under the Nebraska Advantage Act.

17 (g) For applications filed after the effective date of
18 this act, a city, village, county, or municipal county shall have
19 the option to determine whether sales and use taxes under the Local
20 Option Revenue Act or sections 13-319, 13-324, and 13-2813 are
21 refundable. The governing body of the city, village, county, or
22 municipal county shall make such election by adopting an ordinance
23 or resolution and providing a copy to the Tax Commissioner. The
24 election shall apply to all applications filed on or after the date
25 of the election. If a city, village, county, or municipal county

1 takes no action under this subdivision, such local option sales and
2 use taxes shall be refundable as provided in the Nebraska Advantage
3 Act.

4 (3) The appointment of purchasing agents shall be
5 recognized for the purpose of changing the status of a contractor
6 or repairperson as the ultimate consumer of tangible personal
7 property purchased after the date of the appointment which is
8 physically incorporated into the project and becomes the property
9 of the owner of the improvement to real estate. The purchasing
10 agent shall be jointly liable for the payment of the sales and use
11 tax on the purchases with the owner of the improvement to real
12 estate.

13 (4) A determination that a taxpayer is not engaged in a
14 qualified business or has failed to meet or maintain the required
15 levels of employment or investment for incentives, exemptions, or
16 recapture may be protested within sixty days after the mailing of
17 the written notice of the proposed determination. If the notice
18 of proposed determination is not protested within the sixty-day
19 period, the proposed determination is a final determination. If the
20 notice is protested, the Tax Commissioner shall issue a written
21 order resolving such protests. The written order of the Tax
22 Commissioner resolving a protest may be appealed to the district
23 court of Lancaster County within thirty days after the issuance of
24 the order.

25 Sec. 3. Original sections 77-5725 and 77-5726, Revised

LB 640

LB 640

1 Statutes Cumulative Supplement, 2008, are repealed.